



State of Rhode Island  
Office of the General Treasurer  
State House – Room 102  
Providence, Rhode Island 02903

**Seth Magaziner**  
General Treasurer

February 15, 2022

Securities and Exchange Commission  
Office of the Chief Counsel  
Division of Corporation Finance  
100 F Street, NE  
Washington, DC 20549

Via e-mail at [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

Re: Request by Mastercard Corporation to omit the proposal submitted by the Employees' Retirement System of Rhode Island

To Whom It May Concern,

Pursuant to Rule 14a-8 of the Securities Exchange Act of 1934, the Employees' Retirement System of Rhode Island ("Proponent") submitted a shareholder proposal (the "Proposal") to Mastercard Incorporated, ("Company" or "Mastercard").

The Proposal states:

*RESOLVED: Shareholders request the Board of Directors conduct an evaluation and issue a report within the next year (at reasonable cost, excluding proprietary information) describing if and how Mastercard Inc. (Mastercard or "The Company") intends to reduce the risk associated with the processing of payments involving its cards and/or electronic payment system services for the sale and purchase of untraceable firearms, including "Buy, Build, Shoot" firearm kits, components and/or accessories used to assemble privately made firearms known as "Ghost Guns."*

In a letter to the Division dated February 4, 2022 (the "No-Action Request"), the Company stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company's 2022 annual meeting of shareholders. Mastercard argues that it is entitled to exclude the Proposal "because the Proposal deals with matters related to the Company's ordinary business operations".

As discussed more fully below, the Company has not met its burden of proving its entitlement to exclude the Proposal and respectfully request that Mastercard's request for relief be denied.

Mastercard has attempted to recast the proposal and the request made therein.

The Company incorrectly relies on Rule 14a-8(i)(7) which allows a company to omit a shareholder proposal from its proxy materials if such proposal deals with a matter relating to a company's ordinary business operations.

In its February 4, 2022 letter, Mastercard inaccurately cites central considerations of Rule 14a-8(i)(7):

- (i) *that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight”*

Per the “RESOLVED” clause, our proposal does not request that Mastercard make any changes to the day-to-day operations of the company. Our proposal simply requests information on how the company will reduce the risk associated with the processing of payments for the sale and purchase of untraceable firearms,

Mastercard has incorrectly cited two unrelated shareholder proposals, in which shareholders requested that the respective company adopt specific policies:

1. Kroger (Apr. 7, 2016)  
This proposal requested that the board adopt a policy ban on the sale of semi-automatic firearms and accessories at all company owned and operated stores.
2. The Home Depot, Inc. (Mar. 21, 2018)  
This proposal requested that the company stop selling glue traps because of their harm to mice and danger to other wildlife and human health.

Our Proposal simply seeks board-level disclosure on how it intends to manage risks related to processing payments related to untraceable firearms.

In its request for relief, Mastercard wrongly casts the Proposal as an attempt by shareholders to micromanage its operations. The company cites the following clause contained within Rule 14a-8(i)(7) as a reason to exclude the Proposal from its 2022 proxy statement:

*“...probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.”*

With this proposal, shareholders are seeking additional information that would help us make an informed judgment regarding the quality of board oversight as it relates to the risks of the processing of payments for untraceable firearms.

Our Proposal aligns with guidance provided by SEC Staff Legal Bulletin No. 14L (CF)<sup>1</sup> which states, in part:

*“Going forward, the staff will realign its approach for determining whether a proposal relates to “ordinary business” with the standard the Commission initially articulated in 1976, which provided an exception for certain proposals that raise significant social policy issues,[3] and which the Commission subsequently reaffirmed in the 1998 Release. This exception is essential for preserving shareholders’ right to bring important issues before other shareholders by means of the company’s proxy statement, while also recognizing the board’s authority over most day-to-day business matters. For these reasons, staff will no longer focus on determining the nexus between a policy issue and the company, but will instead focus on the social policy significance of the issue that is the subject of the shareholder proposal. In making this determination, the staff will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.*

*Under this realigned approach, proposals that the staff previously viewed as excludable because they did not appear to raise a policy issue of significance for the company may no longer be viewed as excludable under Rule 14a-8(i)(7).”*

The proliferation of ghost guns has a broad, negative, societal impact, transcending “Ordinary Business” and meets the “significant social policy issue” threshold that Staff has articulated with this guidance.

As they are unserialized, ghost guns are, by design, nearly impossible to trace. They can be purchased without background checks, making them a popular weapon for people who intend to use them for criminal activity.

The United States Department of Justice reports that from January 1, 2016, through December 31, 2020, there were approximately 23,906 suspected ghost guns reported to the United States Bureau of Alcohol, Tobacco, Firearms and Explosives as having been recovered by law enforcement from crime scenes, including 325 homicides or attempted homicides, a number which tragically includes students who were killed during mass school shootings.<sup>2</sup>

In 2020, Rhode Island passed a comprehensive law that prohibits the manufacture, sale, transfer, purchase, and possession of ghost guns and undetectable firearms.<sup>3</sup> An additional eight states (CA, CT, DE, HI, NV, NJ, NY, VA, WA)<sup>4</sup>, and the District of Columbia, have laws regulating ghost guns.

In November 2021, the U.S. Department of Justice proposed a rule that would require gun retailers to run background checks prior to selling kits that contain the parts necessary to make a gun. Additionally, gun kit makers would be required to include a serial number for certain parts found in firearm kits. The American Medical Association wrote to U.S. Attorney General Merrick Garland in support of the proposal and reiterated its position that gun violence is a “public health crisis”.<sup>5</sup>

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<sup>1</sup> [https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals#\\_ftn3](https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals#_ftn3)

<sup>2</sup> <https://www.justice.gov/opa/pr/justice-department-proposes-new-regulation-update-firearm-definitions>

<sup>3</sup> <https://www.ri.gov/press/view/38748>

<sup>4</sup> <https://www.everytown.org/press/as-state-legislatures-across-the-country-pass-laws-to-regulate-ghost-guns-massachusetts-can-remain-a-national-gun-safety-leader-by-taking-action-on-pending-bills-heres-what-you-need-to-know/#:~:text=California%2C%20Connecticut%2C%20Hawaii%2C%20New,in%20recent%20years%20as%20well.>

<sup>5</sup> <https://searchlf.ama-assn.org/letter/documentDownload?uri=%2Funstructured%2Fbinary%2Fletter%2FLETTERS%2F2021-8-19-Letter-to-Garland-re-Ghost-Guns-v2.pdf>

On February 3, 2022, the Biden administration announced the launch of a “National Ghost Gun Enforcement Initiative”<sup>6</sup> which will increase training and collaboration to help bring cases against those who use ghost guns to commit crimes.

Law enforcement officials have directly asked Mastercard to take action to curb the purchase of ghost guns.

In a joint letter, dated February 7, 2022, Los Angeles District Attorney George Gacon, Los Angeles Chief of Police Michel R. Moore and Gene Harris, President of the Los Angeles County Police Chiefs’ Association, wrote to Mastercard Incorporated imploring the company to take actions to prevent the purchase of ghost guns.<sup>7</sup> Beyond the sobering statistics cited in the letter is the horrifying impact of the proliferation of ghost guns.

For the reasons set forth above, Mastercard Incorporated has not satisfied its burden of showing that it is entitled to omit the Proposal. We respectfully request that the Company’s request for relief be denied.

My Office appreciates the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact my colleague Randy Rice, Senior Advisor, Policy and Communications, by e-mail at [randall.rice@treasury.ri.gov](mailto:randall.rice@treasury.ri.gov) or by phone at (401) 487-3258.

Sincerely,

  
Seth Magaziner

CC: Janet McGinness, Corporate Secretary, Mastercard  
Ning Chiu, Davis Polk & Wardwell LLP

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<sup>6</sup> <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/02/03/president-biden-announces-more-actions-to-reduce-gun-crime-and-calls-on-congress-to-fund-community-policing-and-community-violence-intervention/#:~:text=Launch%20a%20National%20Ghost%20Gun,ghost%20guns%20to%20commit%20crimes.>

<sup>7</sup> <https://da.lacounty.gov/media/news/district-attorney-george-gasc-n-asks-credit-card-companies-halt-online-payments-ghost>